IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 24443 of 2004

Between:

Birendra Sah, s/o Sri J.Sah,
SMQ 294/8 NP, AF Station, Hakimpet, Secunderabad-500 014.

..... PETITIONER

AND

1 The Deputy Director, Staff Selection Commission (Southern Region) EVK Sampath Buildings, 2nd Floor, College Road, Chennai-600 006.
2 Ministry of Personnel Public Grievance & Pensions rep., by the Secretary, Department of Personnel Training, Government of India, New Delhi.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, preferably one in the nature of writ of certiorari calling for the records relating to the order, dated 25-11-2004 made in O.A.No.1233 of 2004 on the file of the Central Administrative Tribunal Bench at Hyderabad along with the order of the 1st respondent, dated 14-10-2004 vide Memorandum No.6/10/2004-SR, and quash the same as arbitrary, illegal, unconstitutional and consequently direct the respondents to give the benefit of age relaxation as the petitioner is covered under Central Government Employees as per the Notification.

Counsel for the Petitioner:MR.PARAVASTU KRISHNA

Counsel for the Respondents: MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court made the following :

O R D E R: (PER GB.J)

1) This writ petition is filed assailing the order of the Central Administrative Tribunal, Hyderabad, in O.A.No.1233 of 2004, dated 25.11.2004.

2) The matter relates to the recruitment for the post of Junior Hindi Translator in the office of the Controller General of the Defence Accounts-2004. Pursuant to the publication of notification by the Staff Selection Commission in respect of the post of Junior Hindi Translator in the office of the Controller General of Defence Accounts, the petitioner made an application and appeared for the examination and as he was successful in the examination, he was finally selected. However, his appointment was refused on the ground that he is not entitled to claim the age concession benefit available to the departmental candidates on the ground that such a concession, which is available to the Government servants, is not available to the Armed Force personnel. Aggrieved by the said order, the petitioner filed O.A.No.1233 of 2004 before the Tribunal. The Tribunal, however, without going into the merits of the case, found that the O.A. is not maintainable in view of Section 14 of the Administrative Tribunals Act (herein after called as 'the Act') and thereby dismissed the O.A. by order, dated 25.11.2004, against which the present writ petition is filed.

3) The learned counsel for the petitioner submits that the Tribunal has misconstrued the scope of the provisions of the Act. The petitioner is not seeking any relief as a member of the Armed Forces under the Act. But he made an application for a civil

post, namely, Junior Hindi Translator and simply because he is a Sargent in the Air Force, the authorities should not preclude him from applying for a civil post. The learned Counsel also submits that even on merits also he is entitled for the relief as he is required to be treated as a departmental candidate for the purpose of relaxation of age.

4) The learned Standing Counsel for the respondents submits that the service matters relating to the personnel of Armed Forces cannot be entertained by the Central Administrative Tribunal under the provisions of the Act. Therefore, the order cannot be said to be illegal.

5) We have heard the learned counsel for the petitioner and also the learned Standing Counsel for the respondents.

6) For proper appreciation, we think it necessary to extract Section 2 dealing with applicability of Section 14 of the Act, which deals with jurisdiction, power and authority of the Central Administrative Tribunal and reads as follows:

"*Act not to apply to certain persons:-*

The provisions of this Act shall not apply to:

a. *any member of the naval, military or air forces or of any other armed forces of the Union*

b. *deleted;*

c. *any officer or servant of the Supreme Court or of any High Court (or courts subordinate thereto);*

d. *any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature."*

7) From a reading of the above provision it is clear that in matters concerning recruitment to any All India Service or to any Civil Service of the Union can be entertained by the Central Administrative Tribunal. The status of the applicant is not relevant but the post to which he made application is relevant for interpreting the jurisdiction clause. Section 2 of the Act is not applicable to a member of Naval, Military, Air Force or in any other armed forces of the Union. But in the instant case, he is not claiming any benefit, being a member of Naval, Military or Air Force, under the respective clause, but he is claiming a civil post. As there is no prohibition for applying for such a post in the Navy or in the Armed Forces of the Union, we find that the order of the Tribunal is not sustainable under law. Accordingly, it is set aside and the matter is remitted back to the Tribunal for fresh consideration on merits of the case.

8) We are informed that the selections are in the advanced stage and since we find that there is a *prima facie* case in favour of the petitioner, we direct the respondents to keep one post of Junior Hindi Translator unfilled till the disposal of the O.A., if not already filled up, and O.A., shall be disposed of within a period of four weeks from the date of receipt of a copy of this order. The writ petition is accordingly allowed. No costs.

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G.BIKSHAPATHY.J.,

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B.SESHASAYANA REDDY.J.,

Dt.24.01.2005

tjs

To

1. The Deputy Director, Staff Selection Commission (Southern Region) EVK Sampath Buildings, 2nd Floor, College Road, Chennai-600 006

2 The Secretary, Ministry of Personnel Public Grievance & Pensions, Department of Personnel Training, Government of India, New Delhi.

3. 2 C.D.Copies.